

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-218393, B-218394, **DATE:** May 16, 1985
B-218395, B-218396, B-218397, B-218398, B-218399, B-218400
MATTER OF: Julie Research Laboratories, Inc.

DIGEST:

Protests that are not filed with GAO within 10 working days of initial adverse action on agency-level protests are untimely under Bid Protest Regulations. Moreover, the significant issue exception in the regulations will not be invoked when similar issues have been raised in other protests pending at GAO.

Julie Research Laboratories, Inc., protests a number of invitations for bids issued by the Air Force Aerospace Guidance and Metrology Center to acquire various types of electronic equipment. Eight solicitations are involved, as follows:

F33659-84-B-0044 (for DC reference standards and dividers)
F33659-84-B-0046 (for resistance transfer standard systems)
F33659-84-B-0048 (for oscilloscope calibrators)
F33659-84-B-0050 (for RF power meters)
F33659-84-B-0056 (for an electrical standards set)
F33659-84-B-0057 (for multimeter calibrators)
F33659-84-B-0060 (for microwave frequency counters)
F33659-84-B-0065 (for current shunt sets)

According to Julie, none of the specifications in the eight procurements complies with the Federal Acquisition Regulation (FAR) in that they are "gold-plated," do not reflect the government's minimum needs, and unduly restrict competition. Julie also contends the solicitations do not properly set forth salient characteristics as required when supplies are purchased on a brand name or equal basis. We dismiss the protests.

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The record shows that all eight solicitations were issued prior to August 1984. On August 6, Julie initially protested the specifications to the Air Force. In response to this agency-level protest, the Air Force indefinitely postponed bid opening for all eight procurements. On August 16, the Air Force procuring activity denied Julie's protests which, however, were reopened following Julie's resubmission of the protests to Air Force Headquarters on August 22. Subsequently, Julie was asked to submit additional information on the protests. Air Force Headquarters denied the protests by letter dated February 28. On March 11, Julie received amendments to the subject solicitations establishing new bid opening dates.

According to the Air Force, Julie's protests, which were initially filed with our Office on March 26, should be dismissed as untimely. Once Julie received its August 16 letter, the Air Force contends, Julie was on notice of initial adverse agency action, and should have protested to our Office within 10 working days. The fact that a protester continues to pursue a protest with a contracting activity does not, the Air Force argues, toll the time for filing a protest with our Office.

Our Bid Protest Regulations state that in cases where an alleged impropriety in a solicitation is timely protested to the contracting agency, any subsequent protest to our Office must be filed within 10 working days of formal notification of or actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a)(3) (1985).

We do not agree with the Air Force that Julie was required to file its protest with our Office within 10 working days of its receipt of the Air Force's August 16 letter. The record indicates that, based on discussions with Air Force Headquarters personnel within 10 working days of Julie's receipt of the August 16 letter, Julie was informed that in its protests would be decided at higher levels within the agency. Julie asserts (and the Air Force does not deny) that on August 21, it contacted Headquarters personnel and was told that the agency would consider Julie's protest in more detail, without prejudice to Julie's right to later file its protest at our Office. Julie forwarded a copy of its protests to Air Force

Headquarters on August 22. Subsequently, Headquarters personnel asked both Julie and the procuring activity to submit further information on the protests. The indefinite bid opening postponements were lifted only after Air Force Headquarters completed its review and after Julie was advised of the results of that review by the Air Force's letter of February 28.

Julie did not, however, file its protests with our Office within 10 working days after it received the Air Force's February 28 letter, which plainly stated that the Air Force had denied its protests. It received that letter on March 5. Julie's protests should have been received in our Office by the close of business on March 19. Julie filed a telegraphic protest of all eight solicitations on March 26. That telegram, moreover, did not include the detailed statement of the legal and factual grounds of protest required under our regulations. 4 C.F.R. § 21.1(c)(4). A more complete statement, including copies of Julie's agency level protests were received on March 27. Thus, Julie's protests are untimely under 4 C.F.R. § 21.2(a)(3).

According to Julie, however, it was not dilatory in filing its protests and they should be considered under the significant issue or good cause exceptions of our regulations. 4 C.F.R. § 21.2(c). Julie states that it has filed these protests as a "whistleblower" to promote compliance with the requirements of the FAR and that we should consider violations of the FAR as significant issues.

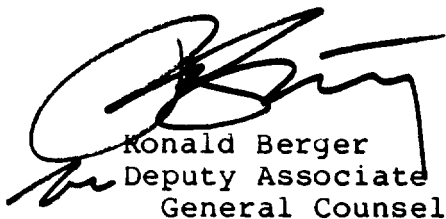
The significant issue exception, which is exercised sparingly so our timeliness rules do not become meaningless, is limited to issues of widespread interest to the procurement community in those instances when consideration of a case is appropriate to assure prompt resolution of legal issues that have not been previously decided. California Aero Dynamics Corp.--Request for Reconsideration, B-216501.2, Dec. 6, 1984, 84-2 CPD ¶ 635. We have pending in our Office other protests that Julie has filed which raise similar issues concerning other Air Force procurements. Consideration of the merits of these issues at this time does not, therefore, appear necessary to assure their prompt resolution; moreover, these types of issues have been considered previously by our Office in numerous cases.

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Considering the applicability of the good cause exception together with Julie's contention that it acted diligently, we note that Julie had months to prepare for the possibility that the Air Force would reject its protests. The good cause exception in 4 C.F.R. § 21.2(c) is invoked only where some compelling reason beyond the protester's control prevents the timely filing of a protest. Ensign Aircraft Co., B-207898.3, Apr. 1, 1983, 83-1 CPD ¶ 340. This test is not met in the circumstances of this case.

The protests are dismissed.


Ronald Berger
Deputy Associate
General Counsel